



JUSTICE ADMINISTRATION DEPARTMENT

HARRIS COUNTY, TEXAS

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Memorandum

To: Members of Commissioners Court
From: Jim Bethke, Director
Date: September 22th, 2020
Subject: Impact of Fines and Fees and Cash Bail Project Scope and Report Outline

Research Scope: On June 9th, Commissioners Court approved a motion made by County Commissioner Rodney Ellis instructing the Justice Administration Department (JAD) write a report and recommendations regarding:

- 1) the imposition of fines and fees associated with criminal offenses,
- 2) the consequences of unpaid fines,
- 3) the use and consequences of cash bail in pre-trial detention,
- 4) and disparate enforcement or impact of such practices on low-income individuals, racial and ethnic minorities, and any other vulnerable groups.

Once the final report is complete, the findings shall be presented at a public hearing.

Purpose of Memo: This memo complies with the request by Commissioners Court to provide with the following information after the passage of the motion:

- 1) research methodology and limitations,
- 2) preliminary findings,
- 3) next steps to complete the report and analysis, and
- 4) additional resources needed to expedite the research and writing process.

Report Methodology: The final report will collect data on the most common types of fines and fees assessed in Harris County, the number of people unable to pay those fines and fees, current practices in Harris County Justice Courts for both those who fail to appear, and those unable to pay assessed fines and fees, and consequences for residents. Additionally, data will be gathered on how fines and fees affect the county budget, the

collection rates for fines and fees. Finally, data will be gathered that either measures or estimates how those fines and fees are disproportionately levied or impactful upon low-income individuals, racial and ethnic minorities, or other vulnerable groups.

When developing recommendations, the report will survey similarly sized counties in Texas and elsewhere to highlight promising and best practices, as well as relevant academic literature.

The findings in the report will be gathered through publicly available information, including data collected by the Texas Office of Court Administration, records directly from the Harris County Justice of the Peace Courts, and through budget information.

Research Limitations: Much of the data available is aggregated, and does not always track individual outcomes. Academic research may allow some inference as to collateral consequences. However, it will be impossible to identify, for example, what percentage of fines for specific offenses go unpaid or the exact likelihood of job loss as a result of a warrant for arrest being issued over an unpaid ticket. These limitations will be noted throughout the report.

Preliminary Findings: Fines and fees have a disproportionate impact on communities of color and individuals who struggle financially. As fines go unpaid, low-income individuals may face arrest warrants or even jail time resulting from driving violations, outstanding tickets, or other minor offenses that normally do not carry those penalties. Criminal justice debt creates a spiral of consequences for those who cannot pay; without intervention, the amounts continue to increase as additional fees accrue, creating a more significant unpaid burden. Unpaid fines and fees also result in negative consequences, outside of the outstanding debt itself, to low-income individuals already struggling to make ends meet. These consequences include suspension of a driver's license, damaged credit scores, and criminal records, which hinder the ability to find employment, stable housing, and other critical services. Those consequences can further produce cycles of debt, probation, and incarceration while exacerbating poverty and extreme poverty (Harvard Law School Criminal Justice Policy Program, 2016).

In Texas, The Brennan Center reports that 90% of cases in which fines and fees were assessed between 2012-2018 were assessed at the Justice of Peace or municipal court level, with most being traffic-related cases (Menendez et al., 2019, p.12).

According to an interactive map created by the Free to Drive campaign, across the United States, nine states will or already do "not suspend, revoke, nor not allow driver's license renewal for failure to pay fines and fees." Additionally, under 2019 legislation that was passed, the state of Texas no longer suspends individuals' driver's licenses, but the Omnibase Program does not renew driver's licenses due to cases where people fail to pay. Harris County Commissioners Court recently ended its contract with Omnibase, but other jurisdictions in the County continue to use it extensively.

Dallas (Texas Fair Defense Project): Misdemeanors are low-level criminal offenses with a fine attached, but at times, individuals may not have the resources to pay these fines. In the event this happens, individuals are thrown into a cycle of debt with the criminal justice system. For example, people have their driver's license suspended (a "court hold") until the fines are paid, and the average amount of time people in Dallas have their fines held for is over five years (Texas Fair Defense Project et al., 2019, p. 4). Additionally, if this debt is not paid off within a certain period, then a warrant may be issued for an individual's arrest. These instances cause individuals to lose their job or ability to apply for one, readily available transportation to get to their job. It can also prevent them from applying for housing or participating in any other process which requires a driver's license. Furthermore, racial disparities when it comes to court holds are high: Black people make up 24 percent of the population of Dallas, but they make up 59 percent of people with court holds in 2017. Some of the recommendations of this project include cutting the OmniBase Program and finding ways to aid people with low-income by providing them with alternatives to harsh fines and fees.

Timbs v. Indiana: Since 2010, 48 states have increased the amount they issue in terms of civil and criminal fines, impoverishing low-income individuals nationwide (ACLU et al., 2018, p. 5). Unpaid fines can lead to disastrous credit scores, wage garnishment, liens, and several further punishments that lead individuals into a debilitating debt (ACLU et al., 2018, p.15). These fines and fees are a financial incentive for law enforcement institutions, creating a conflict of interest for jurisdictions and courts (Beckett & Harris, 2011). A landmark example is the case of *Timbs v. Indiana*. In 2013, Tyson Timbs was arrested during a traffic stop for felony and conspiracy. The court sentenced Timbs to six years, five of which were suspended, and a \$1200 fine. The state also aimed to take away his vehicle. Under the Eighth Amendment's Excessive Fines Clause, incorporated under the Fourteenth Amendment, the states are required not to incur fees over \$10,000 on an individual. In this case, Timbs' vehicle was over four times that amount, and in concurrence with the Eighth Amendment, this punishment is not proportional to the seriousness of the offense. The Supreme Court ruled as such, indicating that "lower federal courts have concluded that judges must consider an individual's financial circumstances when evaluating an Excessive Fines claim" (ACLU et al., 2018, p.36).

ACLU: Judges may fine someone as low as \$1 for offenses, but in many cases, people suffering from poverty face far larger fines. Over one in seven people in Texas live in poverty, and if an individual is unable to pay a fine within a certain amount of time, they risk further fines for outstanding fees and further punishments (ACLU, 2016, p.3). These fees begin to add up due to people's lack of understanding of legal proceedings; courts should guide people through this process in a way that is not based on a financial incentive. This incentive is particularly common with Class C misdemeanors since these lead to *capias pro fine* warrants, and the courts find several creative ways to extract fees from individuals, such as promising no jail time if someone gives up their tax refund (ACLU, 2016, p.8). Additionally, the racial disparities associated with people jailed for debt is striking: 59 percent of people jailed for debt in Texas City, in Galveston County

are Black people, even though the Black population only makes up 29 percent of Texas City. People are often jailed to work off their fines at low wages, a policy echoing practices from the Jim Crow era (p.10-11). Some recommendations from the ACLU include checking with individuals about financial circumstances, removal of unfair fines and fees, finding new ways to fund courts, ending the Driver Responsibility Program and jail commitments, and educating individuals on all of their rights throughout the process.

TX Appleseed: Fine-only offenses include traffic offenses, Class C misdemeanors, and city ordinance violations. Although fines for traffic offenses may range between \$60-\$110, which is already a burden, additional fees could bring total costs to \$450 or more depending on how long it takes an individual to pay their fines. Despite the legal requirement to offer alternatives to fines (like community service) when defendants are unable to pay, many courts instead rely on the threat of jail time (Texas Appleseed et al., 2017, p.5-7). Furthermore, 1 in 8 court cases involving fines and fees were resolved through work by jailed people. This practice is not cost-effective: San Antonio's courts have saved money through not incarcerating people for fines and fees (p.31-32). Additionally, people may be thrown into a further cycle of debt if they are a part of enforcement programs such as the Driver Responsibility Program, the Scofflaw Program, and the DPS Failure to Appear/Failure to Pay Program, which all lead to removing personal transportation from someone's life (Texas Appleseed et al., 2017, p. 13). These policies prevent defendants from finding jobs and applying for housing. Texas Appleseed recommends an end to jail commitments and arrest warrants, always assessing individuals' financial circumstances by the courts, community service as a way of fulfilling the fine, expansion of ticket reductions, and ending programs that take away people's driver's licenses.

Average Fines for Traffic Tickets in Harris County

<i>Common Moving Violations</i>	<i>Total Fine and Cost</i>
Failure to Control Speed	\$185
Failure to Drive in a Single Marked Lane	\$150
Ran Stop Sign or Red Light	\$155
Unsafe Lane Change	\$160
Unsafe Speed	\$135
Driving on Wrong Side of Road – Not Passing	\$165
Driving Wrong Way – Divided Highway	\$215
Driving Wrong Way on One Way Road	\$280
Expired Driver's License	\$100
Failure to Report Change of Address	\$75
No Driver's License on Demand	\$120
No Texas Driver's License	\$155
Violation of Driver's License Restriction	\$100
Expired Inspection Certificate	\$105

Expired Vehicle Registration (Non-Commercial)	\$75
Failure to Wear Safety Belt	\$125
Failure to Maintain Financial Responsibility	\$315
Passing a Stopped School Bus	\$1080 (as noted on the website)
Unrestrained Child	\$185
<i>Additional Fees</i>	
Administrative Fee	\$10

Costs Mandated or Authorized by Texas

<i>Mandated Fine for Each Traffic Ticket</i>	
Class C Misdemeanor Fine	\$1-\$500
<i>Mandated Surcharges for Select Traffic Tickets</i>	
Conviction Surcharge	\$750
Points Surcharge	\$300
<i>Mandated Minimum Court Costs and Fees for Each Traffic Ticket</i>	
Consolidated Fees	\$40
State Traffic Fine	\$30
Judicial Support Fee	\$6
Arrest/Citation Fee	\$5
Juror Reimbursement Fee	\$4
Local Court Cost	\$3
Truancy Prevention Fee	\$2
Indigent Defense Fee	\$2
<i>Select Additional Fees (Mandated)</i>	
Warrant Fee	\$50
Writ Fee	\$35
Payment Plan Fee	\$25
School Offense Fee	\$25
Jail Fee	\$5
Mileage & Meals Fee	\$0.29/mile
Civil Justice Data Cost	\$0.10
<i>Select Additional Fees (Authorized)</i>	
Third-Party Collection Fee	30%
License Suspension Fee	\$30
Special Expense Fee	\$25
Registration Suspension Fee	\$20
Juvenile Case Manager Fee	\$5
Municipal Court Technology Fee	\$4
Municipal Court Building Security Fee	\$3
Administrative Fee	\$2

Court-Ordered Community Service: In the city of Houston, several opportunities for court-ordered community service are available at approved 501c(3) nonprofit organizations and the opportunity exists within the County. The number of hours dedicated to the court-ordered community service varies in each jurisdiction, mandating offenders to serve for a matter of hours or days.

A prominent study of the effectiveness of court ordered community service in the United States showed promising results. Court-ordered community service appears more effective than monetary fines at reducing recidivism, suggesting that they are more effective at ensuring long-term public safety, and accomplishing the broader goal of reducing crime (Bouffard & Muftić, 2007). Evidence from Europe suggests that court-ordered community service programs can reduce imprisonment for fine default. However, McIvor et al. suggest that judges must avoid placing strong penalties for failure to comply, or risk further increasing incarceration rates.

Such programs have drawbacks. UCLA researchers present evidence that the substantial court-ordered community service program in Los Angeles is used by corporations government agencies to displace paid workers. Furthermore, the potential for fines and incarceration upon non-completion may mean court-ordered volunteers are reluctant or afraid to report dangerous work environments and abuse. Herrera et al. recommend oversight of such programs, the reduction of the often-high fees associated with enrollment, and ensuring that meaningful job training and potential employment opportunities occur at volunteer sites (2019).

In sum, court-ordered community service is an option that eliminates the risk of further involvement in the criminal justice system, by both reducing recidivism, and by reducing the likelihood of incarceration for failure to pay fines (2013). Court-ordered community service, however, has the potential to introduce conflicts of interest that could complicate its benefit for communities and court-ordered volunteers.

Harris County: Numerous programs within Harris County accept court-ordered community service volunteers. Each organization has specific needs and is a nonprofit since this is what the courts require for time to be counted and offenses to be forgiven. Some of these organizations include the following:

- Target Hunger
- Houston Food Bank
- Goodwill
- Citizens for Animal Protection
- TWRC Wildlife Center
- David Ivory
- Ministries Clean & Green
- Lone Star College- Cy-Fair Branch Library
- West Houston Assistance Ministries
- Special Pals

There does not appear to be a centralized list of court-ordered volunteer opportunities maintained by Harris County, as is maintained (for example) by the City of Austin Municipal Court (2017). Developing such a list would allow individuals to volunteer with an organization that most closely aligns with their interests and skills, allowing them to build a relationship with the organization and community.

Central Texas Food Bank: In Travis County, the Central Texas Food Bank allows offenders from probation, pre-trial diversion, or drug court to fulfill court-appointed service hours in a variety of productive ways. To be eligible to serve the community, the food bank has a set list of offenses that offenders committed, determining their eligibility for the Program. Additionally, some volunteer positions available to accumulate service hours include warehouse, kitchen, garden, or mobile food pantry shift. In some cases, individuals can donate money instead of providing service hours, if eligible and approved. This project not only serves as a way for individuals to complete their service hours, but also to have meaningful interactions with the greater community (Central Texas Food Bank, 2020).

Collin County: The mission of the Collin County's court-ordered community service program is to "[allow] offenders to 'give back' to the community and model prosocial behavior" (Collins County, 2020). This service must be completed at nonprofit organizations, and the service work completed, generally, must be approved beforehand by a supervision officer. Some county institutions are pre-approved as court-ordered service opportunities, such as Collin County Animal Services and Collin County Public Works. Other organizations that offenders may work with include animal shelters, food pantries, local government departments, substance use treatment centers, resale shops, homeless and protective shelters, and various others (Collin County, 2020).

Money Bail & Pretrial Liberty: According to the Civil Rights Corps, "every year, over half a million people are detained pre-trial" (Civil Rights Corps, p. 1). In Harris County, the bail system "detains 40 percent of all those arrested only on misdemeanor charges, many of whom are indigent and cannot pay the amount needed for release on secured money bail" until case disposition (*O'Donnell v. Harris County, Texas, et al.*, 2019, p.3). Bail is thus administered unfairly: indigent defendants cannot afford to be released when a wealthier defendant facing the same charge could be. If an individual is detained pre-trial, they may be unable to be released until they are brought to trial. This process can be exceedingly slow, given the current extensive backlog of misdemeanor cases. Ultimately, pre-trial detention for misdemeanor charges without a more expedited and individualized process leads to further involvement in the criminal justice system leading to overcrowded jails, traumatic experiences, adverse effects on defendants' families, and the individual's ability to apply for jobs (Civil Rights Corps., p.1-2)

Additionally, pre-trial detention is costly; taxpayers spend \$38 million a day on jails across the United States (Civil Rights Corp, pg. 1). These funds could be directed towards

support services that avoid further involvement within the criminal justice system. High bail and pre-trial detention hurt local economies by reducing employment through pre-trial detention.

Furthermore, as the pandemic worsens, keeping people in pre-trial detention due to misdemeanors and inability to pay bail has become deadly for incarcerated people and corrections workers. Despite the availability of data on the prevalence of COVID-19 in state prisons, data on jails is much less common. Nevertheless, the danger posed by the virus has prompted several jurisdictions to take action to avoid unnecessary contact criminal justice system for residents, including a national eviction moratorium and efforts to release individuals incarcerated in Harris County Jail.

Proposed Outline

- Table of Contents
- Executive Summary
- Origin of Report
- Methodology
 - Examine prevalence of fines and fees in Harris County Justice Courts, rates of failure to appear, rates of failure to pay, arrests warrants issued as a result, collection rates, used by Justice Courts of waivers and community service alternatives to fines and fees, and the budget implications of fine and fee revenue.
 - Interview practitioners in the Justice Courts to understand how determinations of indigency are made, how often defendants are represented by counsel, and how these courts function for low-level criminal charges.
 - Review the status of bail reform litigation. Examine reports from the court monitor on misdemeanor bail settlement and current recommendations for the next steps for pre-trial reform.
- Review civil asset forfeiture data as available. The Texas Tribune examined 6 months of Harris County civil asset forfeiture cases from 2016.
- Report Limitations
 - Criminal justice data is often limited and aggregated. Although inferences can be made, individual outcomes are hard to measure. For instance, there is no easy way to link whether a warrant for arrest resulted in job loss, although academic research identifying and measuring those links will be provided.
- Background
- Current fee structure and regulations associated with court-ordered community service
- Data (Harris focus data)
 - Analyze available data by race and other demographic information on the number of fines and fees cases being brought, how many waivers are granted, how many fines and fees in Harris County Justice Courts, rates of failure to appear, rates of failure to pay, arrests warrants issued, as a result, collection

- rates, used by Justice Courts of waivers and community service alternatives to fines and fees, and the budget implications of fine and fee revenue.
- Legal options
 - What can the Harris County Commissioners Court do?
 - What can other criminal justice stakeholders do?
 - Justices of the Peace
 - District Attorney's Office
 - Public Defenders Office
 - Harris County Sheriff's Department
 - Solutions
 - Increase the use of waivers and community service for those unable to pay fines and fees
 - Provide increased access to centralized, systematized information about how to complete court-ordered community service.
 - Increase fee waivers associated with court-ordered community service.
 - Increase the notice requirements necessary before arrest warrants are issued for failure to appear or failure to pay fines and fees.
 - Improve the format of citation forms to encourage court appearance.
 - Text/phone/email reminder systems to reinforce court dates.
 - Other solutions, as suggested by data and literature review.

Recommended Next Steps: We plan to identify and hire a consultant that can assist JAD with the research and writing process while we hire permanent policy research and analysis staff.

Moving forward, JAD staff and consultant will jointly:

Collect data on:

- The types of fines and fees assessed in Harris County.
- The number of people unable to pay those fines and fees
- Current practices in Harris County Justice Courts for both those who fail to appear and those unable to pay assessed fines and fees, and consequences for residents.

Additionally, collect data on:

- how fines and fees affect the county budget.
- The collection rates for fines and fees.

Finally, we will collect data on how each of the following has a disproportionate impact on low-income individuals, racial/ethnic minorities, and/or other vulnerable groups.

- The types of fines and fees are assessed.
- The number of people unable to pay
- Practices in Harris County Justice Courts for both those who fail to appear and those unable to pay assessed fines and fees.
- How frequently fines and fees are collected.

We will use data on current budget impacts to estimate the impact of reducing or waiving fines and fees for the county budget.

Explore the cost of debt collection associated with the Class C Misdemeanor cases. Under the assumption that 60% of cases would be considered indigent, there is an unknown administrative cost to the County for the collection of debt associated with indigent defendants.

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